

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: TAXOTERE (DOCETAXEL)) MDL No. 16-2740
PRODUCTS LIABILITY LITIGATION)
) SECTION: "H" (5)
)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

PRETRIAL ORDER NO. 114
(CALL DOCKET FOR SHORT FORM COMPLAINT AMENDMENTS
PURSUANT TO PRETRIAL ORDER NO. 105)

In accordance with PTO 105, and the Stipulation Regarding Pretrial Order No. 105 (Rec. Doc. 11347 ("First Stipulation")) entered into by the parties, this Order creates and governs the Call Docket process for contested amendments and, alternately, the process for filing *ex parte* / Consent Motions to Amend Short Form Complaints ("SFC"):

1. As set forth in the First Stipulation, the deadline for every non-bellwether Plaintiff in this MDL to seek an amendment pursuant to PTO 105 has passed. The parties' Second Stipulation Regarding Pretrial Order No. 105 (Rec. Doc. 11910) ("Second Stipulation") sets forth the agreed upon process for filing motions for leave to amend pursuant to PTO 105.

2. Any Plaintiff seeking to amend her Short Form Complaint must have first conferred with each Defendant named in her lawsuit by sending the proposed amended language to each Defendant via electronic mail on or before January 1, 2021.¹ Defendants then have 14 days from receipt of the proposed amendments to consent or oppose by responding to Plaintiff via electronic mail identifying any objected-to language.

¹ Exhibit A provides the amendment conferral e-mail addresses for each Defendant. By entry of this agreed Order, Defendants do not waive objection to lack of proper service of the initial lawsuit complaint. Nothing in this order requires Defendants to respond to proposed amendments in cases not previously properly served.

- a. Where Defendant(s) oppose, Defendants shall provide Plaintiffs' Co-Liaison Counsel with a list of firms that submitted proposed amendments to Defendants along with the identity of the firm's contact person who sent the request to the Defendants. Plaintiffs' Co-Liaison Counsel will then inquire of the firm if it intends to assert the amendments in each case submitted over the Defendants' objections, and thereafter Plaintiffs' Co-Liaison Counsel will advise the Defendants of those cases and amendments for which counsel plan to seek leave. The Defendants will then place these cases on a Call Docket. The parties will further refine this process, if necessary. Those cases the Defendants place on the Call Docket will be then argued to the Court for a determination of whether leave will be granted for Plaintiff to include the proposed amending language. The parties will establish an agreed upon schedule and procedure modeled on the schedule and procedure the parties adopted for the deficiency call docket before the Court pursuant to PTO 22A.
- b. Where Defendant(s) take no position or provide consent, Plaintiff should file an *ex parte* / Consent Motion to Amend on the master docket pursuant to 15(a)(2) of the Federal Rules of Civil Procedure. The Short Form Complaint Call Docket replaces the need for Plaintiffs to file and notice for submission opposed motions to amend and for Defendants to file oppositions. There shall be no briefing by any party. The only issue to be presented to the Court in this call docket process is whether the amending language complies with PTO 105, the First Stipulation and/or any Orders related to PTO 105 amendments.

3. The call docket will be taken up after the PTO 22A Show Cause docket, or any other date set by the Court, which date will be published by the Court on the Court's website.

4. Previous objections may be withdrawn by notifying Plaintiffs' Co-Liaison Counsel that Defendant(s) do not intend to pursue them at the Call Docket, in which case filing pursuant to Paragraph 2(b) may proceed instead. No written positions or arguments may be submitted to the Court or filed in the docket.

5. For disputed amendment language the Court determines is consistent with PTO 105 and thus allowed, Plaintiff is granted leave to file her amended pleading, including any proposed language to which Defendants have not objected, without the need to file a motion for leave, but instead shall file the conformed amended SFC without motion. For disputed amendment language the Court determines is inconsistent with PTO 105, leave to amend is denied. Any Plaintiff who fails to appear at the Call Docket or to establish good cause for proposed amendments violating PTO 105 may be subject to other such relief as the Court may order.

6. Any Plaintiff's decision not to proceed with the Call Docket on a proposed amendment pursuant to PTO 105, after meeting and conferring with Defendant(s), shall not be considered as agreement with the merits of any Defendant's objections.

New Orleans, Louisiana, this 12th day of February, 2021.



HON. JANE T. MILAZZO
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

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